

2007 Montana Legislature

About Bill -- Links

SENATE BILL NO. 138

INTRODUCED BY D. WANZENRIED

BY REQUEST OF THE DEPARTMENT OF REVENUE

A BILL FOR AN ACT ENTITLED: "AN ACT PROHIBITING THE PRACTICE COMMONLY KNOWN AS INSURANCE STUFFING BY SPECIFYING WHEN CORPORATIONS MAY PROPERLY TAKE A DIVIDENDS-RECEIVED DEDUCTION FOR DIVIDENDS RECEIVED FROM INSURANCE COMPANIES; SPECIFYING HOW TO CALCULATE THE APPROPRIATE DIVIDENDS-RECEIVED DEDUCTION IN THOSE CIRCUMSTANCES; ~~APPLYING SPECIAL RULES TO CAPTIVE INSURANCE COMPANIES~~; DISREGARDING THE PERMANENT DEFERRAL OF GAIN RECOGNITION FOR CERTAIN TRANSACTIONS; AUTHORIZING THE DEPARTMENT OF REVENUE TO INCLUDE IN THE GROSS INCOME THE TAXPAYER'S PRO RATA SHARE OF ANY OF THOSE INSURERS' CURRENT EARNINGS AND PROFITS IN THAT TAXABLE YEAR; ~~AMENDING SECTION 33-2-705, MCA~~; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Definitions.** For the purposes of [sections 1 through 7 6], unless otherwise required by the context, the following definitions apply:

(1) "Capitalization percentage" means the appropriate percentage established in [section 2].

(2) "Combined reporting group" means those corporations whose income is required to be included in the same combined report pursuant to 15-31-301 or 15-31-322.

(3) "Commonly controlled group" means a parent corporation and any one or more corporations or chains of corporations connected through stock ownership or constructive ownership with the parent if:

(a) the parent owns stock with more than 50% of the voting power of at least one corporation;

and

1 (b) stock cumulatively representing more than 50% of the voting power of each of the
2 corporations, except the parent, is owned by the parent, one or more corporations described in
3 subsection (3)(a), or one or more other corporations that satisfy the conditions of this subsection
4 (3)(b), if applicable.

5 (4) "Direct written premiums" means amounts written by an insurance company in
6 consideration for insurance and annuity contracts issued to policyholders.

7 (5) "Dividend" means, for purposes of calculating the dividends-received deduction for any tax
8 year described in [section 2], ~~80% of the amount of the qualified dividends received by the~~
9 ~~corporation from the insurer corporation~~ the total amount of qualified dividends allowed as a
10 deduction for federal income tax purposes.

11 (6) "Five-year average" means the aggregate net written premiums or total income, as the
12 case may be, over the 5 immediately preceding calendar or fiscal years, divided by five. If an
13 insurance company in the commonly controlled group has been in existence for fewer than 5
14 years, its aggregate net written premiums and total income must each be multiplied by five and
15 divided by the number of years of its existence. If an insurance company does not have a
16 regulatory filing requirement, the period covered is the fiscal year used for the insurance
17 company's financial statements. The use of either the calendar year or fiscal year that is used for
18 the determination of the first tax year 5-year average is considered an accounting method under
19 [sections 1 through 7 6] and may be changed in subsequent tax years only with the written
20 consent of the department.

21 (7) (a) "Investment income" means an insurance company's earnings from its investment
22 portfolio, including interest, dividends, realized gains or losses, and rent, that, unless otherwise
23 provided in subsections (7)(b) through (7)(d), is required to be reported in an insurer's statutory
24 annual statement in accordance with the annual statement instructions and accounting practices
25 and procedures manual promulgated by the national association of insurance commissioners.

26 (b) Except for reinsurance transactions, realized gains or losses do not include losses incurred
27 in transactions with a person that is a member of the taxpayer's or the insurance company's
28 commonly controlled group.

29 (c) Investment income does not include dividends from a person that is a member of the
30 commonly controlled group. Intercompany dividends that have been eliminated from investment
31 income as would be required to be reported in the statutory annual statement in accordance with

1 the annual statement instructions and accounting practices and procedures manual promulgated
2 by the national association of insurance commissioners may not again be eliminated for this
3 purpose.

4 (d) Investment income does not include income included in the taxpayer's combined report
5 filed in accordance with this chapter.

6 (8) "Insurer" has the meaning provided in 33-1-201.

7 (9) (a) "Net income attributable to investment income" means net income of the insurer
8 multiplied by a ratio, the numerator of which is the insurer's gross investment income from
9 interest, dividends (other than dividends from members of the taxpayer's commonly controlled
10 group), rent, and realized gains or losses, and the denominator of which is the insurer's gross
11 income (other than dividends from members of the taxpayer's commonly controlled group) from
12 all sources.

13 (b) For the purposes of this definition, if an insurer is required to file a statutory annual
14 statement pursuant to the annual statement instructions and accounting practices and procedures
15 manual promulgated by the national association of insurance commissioners, "net income"
16 means net income required to be reported in the insurer's statutory annual statement.

17 (10) (a) "Net written premiums" means direct written premiums plus premiums from
18 reinsurance assumed, less premiums ceded to a reinsurance company, as would be required to
19 be reported in an insurer's statutory annual statement in accordance with the annual statement
20 instructions and accounting practices and procedures manual promulgated by the national
21 association of insurance commissioners.

22 (b) Net written premiums from life insurance contracts are determined by multiplying the net
23 written premiums received, assumed, or ceded by 1.3.

24 (c) Net written premiums from financial guaranty insurance contracts are determined by
25 multiplying the net written premiums received, assumed, or ceded by the lesser of 2.3 or an
26 amount that would cause the ratio of the 5-year average net written premiums for all financial
27 guaranty insurance companies in the commonly controlled group to the 5-year average total
28 income for all financial guaranty insurance companies in the commonly controlled group to be
29 equal to the applicable capitalization percentage.

30 (11) (a) "Predominantly captive insurance group" means all insurer members of a commonly
31 controlled group that has a capitalization in excess of \$10 million that

1 ~~(i) receive more than 50% of their net written premiums from members of the commonly~~
2 ~~controlled group, determined without regard to the weighting factors described subsection (10)(b)~~
3 ~~or (10)(c); or~~

4 ~~(ii) have a ratio determined under [section 3(1)(b)] that is greater than 50% when determined.~~

5 ~~(b) For the purposes of this definition, premiums received or accrued from a member of the~~
6 ~~insurance company's commonly controlled group do not include premiums if the direct insurance~~
7 ~~risks ceded by affiliates and assumed by the insurance company originated with a person that is~~
8 ~~not a member of the insurance company's commonly controlled group.~~

9 ~~(12) (11)~~ "Premiums from reinsurance assumed" means amounts received or accrued by an
10 insurance company in consideration for liabilities it assumes from another insurance company.

11 ~~(13) (12)~~ "Qualified dividend" means a dividend received by a corporation during the tax year
12 from a corporation that is an insurer, whether or not the insurer is engaged in business in
13 Montana, if at the time of each dividend payment at least 80% of each class of stock of the
14 insurer was owned, directly or indirectly, by the corporation receiving the dividend.

15 ~~(14) (13)~~ "Total income" means net written premiums plus investment income.

16
17 **NEW SECTION. Section 2. Deduction of dividends received by corporations --**
18 **capitalization percentage.** (1) For the purposes of calculating the dividends-received deduction
19 allowed for Montana purposes, the amount of dividends must be multiplied by the appropriate
20 capitalization percentage determined under subsections (2) through (4).

21 (2) If the ratio of the 5-year average net written premiums for all insurance companies in a
22 commonly controlled group to the 5-year average total income for all insurance companies in the
23 commonly controlled group for the tax year is greater than or equal to 60%, then the capitalization
24 percentage is 100%.

25 (3) If the ratio of the 5-year average net written premiums for all insurance companies in a
26 commonly controlled group to the 5-year average total income for all insurance companies in the
27 commonly controlled group for the tax year is less than 60% but greater than 10%, then the
28 capitalization percentage is equal to the following fraction, expressed as a percentage:

29 (a) the numerator is the 5-year average net written premiums for the tax year; and

30 (b) the denominator is 60% of the 5-year average total income for that tax year.

(4) If the ratio of the 5-year average net written premiums for all insurance companies in a commonly controlled group to the 5-year average total income for all insurance companies in the commonly controlled group for the tax year is 10% or less, then the capitalization percentage is 0%.

NEW SECTION. Section 3. Deduction of dividends received from insurance company that insures risks of member of commonly controlled group. (1) A deduction is not allowed for dividends attributable to premiums received or accrued by an insurance company from a member of the insurance company's commonly controlled group. Premiums received or accrued from a member of the insurance company's commonly controlled group do not include premiums if the direct insurance risks ceded by affiliates and assumed by the insurance company originated with a person that is not a member of the insurance company's commonly controlled group. Dividends attributable to premiums received or accrued from a member of a commonly controlled group is equal to total dividends received multiplied by the greater of:

— (a) except as provided in subsection (2), the ratio of net written premiums from a member of the insurance company's commonly controlled group divided by total net written premiums; or

— (b) (i) for a property casualty insurer, the ratio of the underwriting risk associated with a member of the commonly controlled group's insurance contracts to the insurance company's total underwriting risks for all insurance contracts. The underwriting risk is the underwriting risk reserves, which are losses plus expense risk-based capital after discount, calculated using the risk-based capital instructions and report promulgated by the national association of insurance commissioners or any substantially equivalent successor instructions and report as the report read on January 1 of the year in which the taxpayer's tax year begins.

— (ii) for a life insurer, the ratio of aggregate reserves for life, accident, and health contracts plus liability for deposit-type contracts plus contract claims held for policies issued to members of the insurance company's commonly controlled group divided by total aggregate reserves for life, accident, and health contracts plus liability for deposit-type contracts plus contract claims.

(2) Net written premiums do not include premiums received or accrued from another member of the insurance company's commonly controlled group. Premiums from another member of the commonly controlled group is the greater of:

1 ~~(a) net written premiums from a member of the insurance company's commonly controlled~~
2 ~~group; or~~

3 ~~(b) (i) for a property casualty insurer, the net written premiums received or accrued by the~~
4 ~~insurance company multiplied by the ratio of the underwriting risk associated with the member of~~
5 ~~the commonly controlled group's insurance contracts to the insurance company's total~~
6 ~~underwriting risks for all insurance contracts. The underwriting risk is the underwriting risk~~
7 ~~reserves, which is loss plus expense risk-based capital after discount, calculated using the risk-~~
8 ~~based capital instructions and report promulgated by the national association of insurance~~
9 ~~commissioners or any substantially equivalent successor instructions and report as the report~~
10 ~~read on January 1 of the year in which the taxpayer's tax year begins.~~

11 ~~(ii) for a life insurer, net written premiums received or accrued by the insurance company~~
12 ~~multiplied by the ratio of aggregate reserves for life, accident, and health contracts plus liability for~~
13 ~~deposit-type contracts plus contract claims held for policies issued to members of the insurance~~
14 ~~company's commonly controlled group divided by total aggregate reserves for life, accident, and~~
15 ~~health contracts plus liability for deposit-type contracts plus contract claims.~~

16
17 **NEW SECTION. Section 4 3. Deductions not allowed for certain expenses.** (1) A
18 deduction is not allowed for any expense under subsection (2) that is paid or incurred to an
19 insurer if the insurer is a member of the taxpayer's commonly controlled group and the amount
20 paid or incurred would constitute income to the insurer if the insurer were subject to the Montana
21 income or franchise tax.

22 (2) (a) The following interest amounts payable to an insurer in the same commonly controlled
23 group are disallowed:

24 (i) interest paid or incurred to an insurer in the taxpayer's commonly controlled group with
25 respect to indebtedness, other than qualified marketable debt instruments, the principal amount
26 of which is attributable to a contribution of money by a noninsurer member of the taxpayer's
27 commonly controlled group to the capital of an insurer member of that group, including the
28 principal amount of a loan arising from a direct or indirect transfer of money from that contribution
29 to capital from one insurer to another insurer of the same commonly controlled group;

1 (ii) interest paid or incurred to an insurer with respect to a note or other debt instrument, other
2 than qualified marketable debt instruments, contributed to the capital of an insurer with respect to
3 its stock by a noninsurer member of the commonly controlled group;

4 (iii) interest paid or incurred within 5 years after the direct or indirect acquisition of the insurer
5 by a member of the commonly controlled group, other than interest on qualified marketable debt
6 instruments;

7 (iv) interest paid or incurred during the tax year to any insurer in the commonly controlled
8 group multiplied by the disqualifying percentage. The disqualifying percentage is an amount equal
9 to 100% less the capitalization percentage provided for in [section 2(2), (3), or (4)] for that tax
10 year whether or not a dividend is paid or accrued.

11 ~~(v) interest determined by multiplying the amount of interest paid or incurred to an insurer in~~
12 ~~the commonly controlled group by the ratio of the commonly controlled group determined under~~
13 ~~[section 3(1)] for the tax year, whether or not a dividend was paid or accrued in that year.~~

14 (b) The following noninterest expenses are disallowed:

15 (i) expenses attributable to property formerly held by the taxpayer or a member of the
16 taxpayer's commonly controlled group that was acquired by the insurer in a transaction in which
17 gain was realized but not recognized, including any income deferred under [section 5 4], by the
18 taxpayer or a member of its commonly controlled group;

19 (ii) expenses attributable to property purchased with the proceeds attributable to a contribution
20 by a noninsurer member of the taxpayers' commonly controlled group to the capital of an insurer
21 member of that group, including amounts attributable to a direct or indirect transfer of money from
22 that contribution from one insurer to another insurer in the same group.

23 (3) Expenses that may be disallowed by more than one expense exclusion in subsection (2)
24 may be included only in the exclusion that will result in the highest disallowance amount.

25 (4) For purposes of this section, the following definitions apply:

26 (a) "Qualified marketable debt instruments" means publicly available debt instruments of all
27 noninsurer members of the commonly controlled group issued, but only to the extent that the
28 aggregate principal amount of publicly available debt instruments held by all insurer members of
29 the commonly controlled group constitutes less than 10% of the total outstanding principal
30 amount of publicly available debt instruments issued by all noninsurer members.

(b) "Publicly available debt instruments" means debt instruments available to the general public, including bonds, debentures, and negotiable instruments that are rated by a nationally recognized statistical rating organization, as that term is used in Rule 15c3-1(c)(2)(vi)(F) under the Securities Exchange Act of 1934, in one of its generic rating categories that signifies investment grade.

NEW SECTION. Section 5.4. Transfer of property to insurer. (1) (a) Except as provided in subsection (1)(b), in connection with any exchange described in section 332, 351, 354, 356, or 361 of the Internal Revenue Code, 26 U.S.C. 332, 351, 354, 356, or 361, when a taxpayer transfers property to an insurer, the insurer, for purposes of determining the extent to which gain is recognized on that transfer, is not, for the purposes of this section, considered a corporation.

(b) The provisions of subsection (1)(a) do not apply to any of the following types of transactions, unless that transaction has the effect, either directly or indirectly, of transferring appreciated property from a taxpayer subject to tax under this chapter or a member of the taxpayer's combined reporting group, to an insurer:

(i) an exchange or transfer pursuant to section 368(a)(2)(D) or (a)(2)(E) of the Internal Revenue Code, 26 U.S.C. 368(a)(2)(D) or (a)(2)(E);

(ii) a transfer of stock in an 80%-owned insurer for the purpose of filing a consolidated tax return or for financial or regulatory reporting; or

(iii) a transfer or exchange of publicly owned stock of the parent corporation.

(c) (i) If a transaction described in subsection (1)(b) would qualify under that subsection except that the transaction has the effect, directly or indirectly, of transferring appreciated property from a taxpayer or a member of the taxpayer's combined reporting group, subject to tax under this chapter, to an insurer, then, if the property is used in the active trade or business of the insurer, subsection (2) applies to that transfer.

(ii) For purposes of this subsection (1)(c), "appreciated property" means property whose fair market value, as of the date of the transfer subject to this section, exceeds its adjusted basis as of that date.

(2) (a) If property subject to subsection (1)(a) or (6) is transferred to an insurer for use in the active conduct of a trade or business of the insurer, then any gain otherwise required to be recognized under subsection (1)(a) or (6) is deferred until the date that:

1 (i) the property is no longer owned by an insurer in the taxpayer's commonly controlled group
2 or a member of the taxpayer's combined reporting group;

3 (ii) the property is no longer used in the active conduct of the insurer's trade or business or the
4 trade or business of another member in the taxpayer's combined reporting group; or

5 (iii) the holder of the property is no longer held by an insurer in the commonly controlled group
6 of the transferor or a member of the taxpayer's combined reporting group.

7 (b) Any of the events described in subsection (2)(a) must be treated as a disposition of the
8 property under this subsection (2), irrespective of whether any other provision of this chapter or in
9 the Internal Revenue Code would otherwise permit nonrecognition treatment of the transaction
10 described in this subsection (2).

11 (c) An insurer that becomes a member of the taxpayer's commonly controlled group or a
12 corporation that becomes a member of the taxpayer's combined reporting group as a result of a
13 transaction referred to in this subsection (2) must be treated as a member of the taxpayer's
14 commonly controlled group or a member of the taxpayer's combined reporting group at the time
15 of the transfer for purposes of this subsection (2).

16 (d) For purposes of this subsection (2), stock of an insurance subsidiary constitutes property
17 used in the active trade or business of the insurer.

18 (e) This subsection (2) does not apply to any property described by section 367(a)(3)(B) of the
19 Internal Revenue Code, 26 U.S.C. 367(a)(3)(B).

20 (f) If the deferred gain required to be taken into account under this subsection (2) is business
21 income as defined in 15-31-302, the gain must be apportioned using the apportionment
22 percentage for the tax year that the gain is required to be taken into account under this
23 subsection (2). Except as provided in 15-31-312 and rules adopted to implement that section, for
24 purposes of the sales factor for that tax year, the transaction giving rise to that gain must be
25 treated as a sale occurring in the tax year the gain is taken into account. The amount of any gain
26 required to be recognized under this subsection (2) upon any disposition described in this
27 subsection (2) may not exceed the lesser of the deferred gain or the gain realized in the
28 transaction in which gain is required to be recognized under this subsection (2).

29 (g) For purposes of computing the amount of gain required to be recognized under this
30 subsection (2), appropriate adjustments may be made, pursuant to rules adopted by the

1 department, to the basis of stock to reflect the disallowance of any expenses under [section 4
2 3(2)].

3 (3) The department may adopt rules providing for an annual reporting requirement in the form
4 of a statement or other form, to be attached to the transferor taxpayer's return, regarding the
5 current ownership of any property for which any gains were previously deferred pursuant to
6 subsection (2). If the transferor taxpayer fails to provide information required by the department,
7 the department may, in lieu of the year in subsection (2)(f), require that the transferor taxpayer
8 take those gains into account in the first tax year in which the current ownership of the property is
9 not reported unless the property is still owned by the transferee and the failure to provide the
10 information was due to reasonable cause and not willful neglect. If a taxpayer fails to satisfy the
11 reporting requirements of this subsection (3), then a notice of proposed deficiency assessment
12 resulting from adjustments attributable to gains previously deferred pursuant to subsection (2),
13 with respect to which the reporting requirements were not satisfied, may be mailed to the
14 taxpayer within 4 years from the date on which the reporting requirements are satisfied by the
15 taxpayer.

16 (4) Unless otherwise provided by rules adopted by the department, a transfer by a taxpayer of
17 an interest in a partnership to an insurer in a transaction described in subsection (1)(a) must be
18 treated as a transfer to that insurer of the taxpayer's pro rata share of the assets of the
19 partnership.

20 (5) (a) A distribution described by section 355 of the Internal Revenue Code, 26 U.S.C. 355, or
21 section 356 of the Internal Revenue Code, 26 U.S.C. 356, as it relates to section 355 of the
22 Internal Revenue Code, must be treated as an exchange under this section, whether or not the
23 distribution is an exchange. This subsection (5)(a) does not apply to a distribution in which:

24 (i) the distributing corporation is an insurer; or

25 (ii) the distributee is a person other than an insurer.

26 (b) For a distribution described in section 355 of the Internal Revenue Code, 26 U.S.C. 355, or
27 section 356 of the Internal Revenue Code, 26 U.S.C. 356, as it relates to section 355 of the
28 Internal Revenue Code, by a taxpayer to an insurer, the department shall adopt rules regarding
29 the recognition of gain to prevent the removal of gain inherent in property at the time of a transfer
30 from taxation.

1 (6) For purposes of this section, a transfer of property to an insurer as a contribution to capital
2 of that insurer by one or more persons who, immediately after the transfer, own, within the
3 meaning of section 318 of the Internal Revenue Code, 26 U.S.C. 318, stock possessing at least
4 80% of the total combined voting power of all classes of stock of that insurer that are entitled to
5 vote must be treated as an exchange of that property for stock of the insurer equal in value to the
6 fair market value of the property transferred.

7 (7) (a) In the case of any liquidation to which section 332 of the Internal Revenue Code, 26
8 U.S.C. 332, applies, unless otherwise provided in rules adopted by the department:

9 (i) sections 337(a) and (b)(1) of the Internal Revenue Code, 26 U.S.C. 337(a) and (b)(1), do
10 not apply if the 80% distributee is an insurer; and

11 (ii) if the distributor is an insurer, the distributee shall treat the distribution as a distribution from
12 the insurer's earnings and profits.

13 (b) For purposes of subsection (7)(a)(ii), the distribution from earnings and profits must be
14 treated as a dividend eligible for a deduction, to the extent otherwise provided in [section 2], as if
15 it was actually distributed as a dividend.

16 (8) (a) Upon an adequate showing by a taxpayer that a transaction referred to in subsection
17 (1) or (7) would not violate the purposes of this section to prevent the removal of gain inherent in
18 property at the time of a transfer from taxation under this section, the department may grant relief
19 from the application of this section.

20 (b) In a proceeding contesting the department's actions under this section, relief may be
21 granted a taxpayer only upon a specific finding by the state tax appeal board or district court that
22 the contested transfer did not remove gain inherent in property at the time of transfer from
23 taxation under this section.

24
25 **NEW SECTION. Section 6 5. Includable in gross income.** (1) (a) The department may
26 include in the gross income of the taxpayer or a member of the taxpayer's combined reporting
27 group in that tax year the taxpayer's pro rata share or the pro rata share of a member of the
28 taxpayer's combined reporting group of any of those insurers' current earnings and profits in that
29 tax year, but not to exceed an amount equal to the specific insurer's net income attributable to
30 investment income for that year minus that insurer's net written premiums received in that same
31 tax year, if:

1 (i) for any tax year, an insurer is a member of a taxpayer's commonly controlled group;

2 (ii) the ratio of the 5-year average net written premiums to the 5-year average total income of

3 all insurers in the commonly controlled group is equal to or less than 0.10 or, if the insurer

4 ~~members of the commonly controlled group constitute a predominantly captive insurance group,~~

5 ~~the ratio is equal to or less than 0.40;~~ and

6 (iii) the accumulation of earnings and profits of the insurers in the commonly controlled group

7 had a substantial purpose of avoidance of taxes on, according to, or measured by income of this

8 state or any other state.

9 (b) The amount included in gross income pursuant to subsection (1)(a) must be treated as a

10 dividend received from an insurance company during the tax year, and to the extent applicable,

11 [section 2] applies to that amount.

12 (2) To the extent that the amounts are included pursuant to subsection (1) in the gross income

13 of a taxpayer or a member of the taxpayer's combined reporting group, those amounts may not

14 again be considered as investment income in the application of the ratio in subsection (1)(a)(ii).

15 (3) (a) The amounts included in gross income under subsection (1) may not again be included

16 in gross income when subsequent distributions are made to:

17 (i) the taxpayer or a member of the taxpayer's combined reporting group;

18 (ii) another taxpayer that acquires an interest in the stock of the taxpayer or a member of the

19 taxpayer's combined reporting group with respect to which subsection (1) was applied; or

20 (iii) any successor or assign of the respective taxpayers or a member of the taxpayer's

21 combined reporting group described in this subsection (3).

22 (b) For purposes of applying this subsection (3), distributions from an insurer are considered

23 first made from amounts included under subsection (1).

24 (4) For purposes of this section, the terms "net written premiums", "5-year average net written

25 premiums", and "5-year average total income" have the same meaning as applicable for [section

26 2], whether or not a dividend is actually received from any insurer member of the taxpayer's

27 commonly controlled group in that tax year.

28 (5) For the purposes of this section, the taxpayer's pro rata share of the current earnings and

29 profits of an insurer member of a commonly controlled group is the amount that would have been

30 received as a dividend by the taxpayer or a member of the taxpayer's combined reporting group

31 if:

1 (a) the insurer had directly distributed its current earnings and profits with respect to its stock
2 held by the taxpayer or a member of the taxpayer's combined reporting group; and

3 (b) the insurer holds the stock of another insurer and all other insurer members of the
4 taxpayer's commonly controlled group had distributed the same current earnings and profits with
5 respect to their stock, in the same tax year, until amounts were received as a dividend by the
6 taxpayer or a member of the taxpayer's combined reporting group from an insurer member of the
7 commonly controlled group.

8 (6) In the application of this section, amounts treated as a dividend received by a partnership
9 are considered a dividend received by each partner that is a member of the commonly controlled
10 group, either directly or through a series of tiered partnerships.

11 (7) The provisions of this section do not apply to an insurer involved in a proceeding under the
12 Insurers Supervision, Rehabilitation, and Liquidation Act, Title 33, chapter 2, part 13, or any
13 similar proceeding brought by any other state insurance commissioner.

14
15 **NEW SECTION. Section 6. Legitimate business purpose.** (1) If a taxpayer's ratio of the 5-
16 year average net written premiums for all insurance companies in a commonly controlled group to
17 the 5-year average total income for all insurance companies in the commonly controlled group for
18 the tax year is greater than or equal to 60%, as determined under [section 2], then the provisions
19 of [sections 2 through 5] do not apply.

20 (2) If a taxpayer's ratio of the 5-year average net written premiums for all insurance
21 companies in a commonly controlled group to the 5-year average total income for all insurance
22 companies in the commonly controlled group for the tax year is less than 60%, as determined
23 under [section 2], and upon an adequate showing by a taxpayer that a transaction referred to in
24 [sections 2 through 5] was entered into with a legitimate business purpose, the department may
25 grant relief from the application of [this act].

26
27 **NEW SECTION. Section 7. Rulemaking authority.** The department may adopt rules that
28 are necessary to implement and administer the provisions of [sections 1 through 6]. To implement
29 the provisions of [sections 1 through 7], the department may adopt rules that it considers
30 necessary, including but not limited to the following:

1 ~~(1) establish a comparable weighting factor as described in the definition of net written~~
2 ~~premiums for new lines of insurance not addressed in [sections 1 through 7];~~

3 ~~(2) for purposes of determining the applicable ratios described in [sections 3 and 4], the~~
4 ~~inclusion or exclusion of items of investment income to eliminate the effects of devices designed~~
5 ~~to manipulate those ratios for purposes of avoiding a tax imposed by this chapter;~~

6 ~~(3) for purposes of determining the applicable ratios described in [sections 3 and 4], the~~
7 ~~inclusion or exclusion of items of investment income to prevent distortion causing significant~~
8 ~~reduction in those ratios so that the result does not reflect a valid business purpose;~~

9 ~~(4) providing for an annual reporting requirement in the form of a statement or other form, to~~
10 ~~be attached to the transferor taxpayer's return, regarding the current ownership of any property~~
11 ~~for which any gains were previously deferred pursuant to [section 5];~~

12 ~~(5) to carry out the purposes of [section 5], which is to prevent the removal of gain inherent in~~
13 ~~property at the time of a transfer from taxation under this chapter. The rules may provide for~~
14 ~~appropriate adjustments to the amount of deferred income described in [section 5] to avoid the~~
15 ~~double inclusion of income for situations including but not limited to the property transferred to an~~
16 ~~insurer member of the commonly controlled group that is later acquired by a noninsurer member~~
17 ~~of the taxpayer's combined reporting group.~~

18 ~~(6) to describe conditions under which the accumulation of earnings and profits of those~~
19 ~~insurers described in [section 6] do not have the substantial purpose of avoidance of taxes on,~~
20 ~~according to, or measured by income of this state or any other state.~~

21
22 **Section 8. Section 33-2-705, MCA, is amended to read:**

23 ~~"33-2-705. Report on premiums and other consideration -- tax. (1) Each authorized~~
24 ~~insurer and each formerly authorized insurer with respect to premiums received while an~~
25 ~~authorized insurer in this state shall file with the commissioner, on or before March 1 each year, a~~
26 ~~report in a form prescribed by the commissioner showing total direct premium income, including~~
27 ~~policy, membership, and other fees, premiums paid by application of dividends, refunds, savings,~~
28 ~~savings coupons, and similar returns or credits to payment of premiums for new or additional or~~
29 ~~extended or renewed insurance, charges for payment of premium in installments, and all other~~
30 ~~consideration for insurance from all kinds and classes of insurance, whether designated as a~~
31 ~~premium or otherwise, received by a life insurer or written by an insurer other than a life insurer~~

1 during the preceding calendar year on account of policies covering property, subjects, or risks
2 located, resident, or to be performed in Montana, with proper proportionate allocation of premium
3 as to property, subjects, or risks in Montana insured under policies or contracts covering property,
4 subjects, or risks located or resident in more than one state, after deducting from the total direct
5 premium income applicable cancellations, returned premiums, the unabsorbed portion of any
6 deposit premium, the amount of reduction in or refund of premiums allowed to industrial life
7 policyholders for payment of premiums direct to an office of the insurer, all policy dividends,
8 refunds, savings, savings coupons, and other similar returns paid or credited to policyholders with
9 respect to the policies. As to title insurance, "premium" includes the total charge for the
10 insurance. A deduction may not be made of the cash surrender values of policies. Considerations
11 received on annuity contracts may not be included in total direct premium income and are not
12 subject to tax.

13 — (2) Coincident with the filing of the tax report referred to in subsection (1), each insurer shall
14 pay to the commissioner a tax upon the net premiums computed at the rate of 2 3/4%.

15 — (3) That portion of the tax paid under this section by an insurer on account of premiums
16 received for fire insurance must be separately specified in the report as required by the
17 commissioner, for apportionment as provided by law. When insurance against fire is included with
18 insurance of property against other perils at an undivided premium, the insurer shall make a
19 reasonable allocation from the entire premium to the fire portion of the coverage as must be
20 stated in the report and as may be approved or accepted by the commissioner.

21 — (4) With respect to authorized insurers, the premium tax provided by this section must be
22 payment in full and, except as provided in [sections 1 through 7], is in lieu of all other demands for
23 any and all state, county, city, district, municipal, and school taxes, licenses, fees, and excoises of
24 whatever kind or character, excepting only those prescribed by this code, taxes on real and
25 tangible personal property located in this state, and taxes payable under 50-3-109.

26 — (5) Insurers paying a premium tax under subsection (2) and holding a certificate pursuant to
27 Title 90, chapter 10, may redeem the certificate under the terms of 90-10-304 as a credit against
28 the premium tax after excluding the portion of premiums identified in subsection (3).

29 — (6) The commissioner may suspend or revoke the certificate of authority of any insurer that
30 fails to pay its taxes as required under this section.

1 ~~(7) In addition to the penalty provided for in subsection (6), the commissioner may impose~~
2 ~~upon an insurer who fails to pay the tax required under this section a fine of \$100 plus interest on~~
3 ~~the delinquent amount at the annual interest rate of 12%.~~

4 ~~(8) The commissioner may by rule provide a quarterly schedule for payment of portions of the~~
5 ~~premium tax under this section during the year in which tax liability is accrued."~~

6
7 **NEW SECTION. Section 9. Severability.** If a part of [this act] is invalid, all valid parts that
8 are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more
9 of its applications, the part remains in effect in all valid applications that are severable from the
10 invalid applications.

11
12 **NEW SECTION. Section 10. Codification instruction.** [Sections 1 through 7] are intended
13 to be codified as an integral part of Title 15, chapter 31, and the provisions of Title 15, chapter 31,
14 apply to [sections 1 through 7].

15
16 **NEW SECTION. Section 11. Effective date.** [This act] is effective on passage and approval.

17
18 **NEW SECTION. Section 12. Retroactive applicability.** [This act] applies retroactively,
19 within the meaning of 1-2-109, to tax years beginning after December 31, 2006.

20 - END -

21
22
23 **Latest Version of SB 138 (SB0138.01)**

24 Processed for the Web on December 21, 2006 (9:37am)

25 New language in a bill appears underlined, deleted material appears stricken.

26 Sponsor names are handwritten on introduced bills, hence do not appear on the bill until it is
27 reprinted.

28 See the status of this bill for the bill's primary sponsor.

29 [Status of this Bill](#) | [2007 Legislature](#) | [Leg. Branch Home](#)

30 [This bill in WP 5.1](#) | [All versions of all bills \(WP 5.1 format\)](#)

1 Authorized print version w/line numbers (PDF format)

2 [NEW SEARCH]

3 Prepared by Montana Legislative Services

4 (406) 444-3064

5